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ALEXANDER BALBUENA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ALEXANDER BALBUENA,)	No. C 11-0228 RS
)	
Petitioner,)	
)	
v.)	STIPULATION TO EXTEND
)	TIME FOR PETITIONER TO
MARTIN BITER, Warden, and THE CALIFORNIA)	FILE 60(b) MOTION AND
ATTORNEY GENERAL,)	[proposed] ORDER
)	
Respondents.)	

The parties hereby STIPULATE that petitioner, Alexander Balbuena, through counsel, Scott A. Sugarman, Sugarman & Cannon, may extend the time to file a motion under Rule 60(b) of the Federal Rules of Civil Procedure for 30 days, up to and including April 7, 2014, beyond the filing date of March 7, 2014, set by this Court's January 6, 2014 Order.

On January 14, 2011, Alexander Balbuena ("Balbuena") *pro se* filed a timely petition for writ of habeas corpus in this Court in this docket. On May 25, 2012, this Court denied that petition in its entirety, and denied Balbuena's request for a Certificate of Appealability. On May 23, 2013, the United States Court of Appeals for the Ninth Circuit issued a Certificate of

1 Appealability on whether Balbuena's statement had been voluntary or the product of police
2 coercion:

3 [whether the trial court] violated appellant's right to due process by denying his
4 motion to suppress his confession on the ground that it was an involuntary
5 product of police coercion.

6 No. 12-1641, Dkt. 7. The Court of Appeals further directed that counsel be appointed for
7 Balbuena.

8 Thereafter, Balbuena, through counsel, filed in the Court of Appeals a Motion to Stay
9 Appeal and Remand to this Court to permit Balbuena to address an issue not raised in his habeas
10 petition in this Court. Balbuena argued that Balbuena's statement/confession, which was
11 introduced at his trial, was obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966) and
12 its progeny, including *United States v. Bland*, 908 F.2d 471 (9th Cir. 1990). On October 17,
13 2013, after receiving briefing from the parties, the Court of Appeals denied Balbuena's Motion
14 for Stay without prejudice to filing a renewed motion for stay accompanied by a written
15 declaration that this Court was willing to entertain a motion to re-open proceedings in this action.
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17 On November 1, 2013, Balbuena filed in this Court an Application for a Written
18 Indication. On November 7, 2013, this Court issued an Order re: Application for Written
19 Indication, providing that this Court would entertain a motion to amend the petition to add a new
20 claim in the habeas proceeding. No. C 11-0228 RS, Dkt. 27. The next day, Balbuena notified
21 the Court of Appeals of this Court's Order. No. 12-16414, Dkt. 23.
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23 On November 22, 2013, Balbuena filed a renewed Motion for Stay and to Hold in
24 Abeyance the Pending Appeal, accompanied by this Court's Order regarding a Written
25 Indication. No. 12-16414, Dkt. 26. On December 30, 2013, the Court of Appeals granted that
26 Motion and remanded this matter to this Court to consider Balbuena's Motion under Rule 60(b).
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1 On January 6, 2014, this Court issued an Order setting a briefing schedule for Balbuena's
2 Motion under Rule 60(b), directing that Balbuena file that Motion on or before March 7, 2014,
3 and setting deadlines for subsequent pleadings. In that Order, the Court noted that a reasonable
4 request for extension of time will be granted upon a showing of good cause if such request was
5 filed on or before the deadline set.

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7 Balbuena, through counsel, now seeks, with the concurrence of respondent, an additional
8 30 days to file a Motion under Rule 60(b).

9 Counsel wants to advise this Court that while Balbuena's appeal was pending in the
10 United States Court of Appeals for the Ninth Circuit of this Court's denial of his habeas petition,
11 Balbuena *pro se* filed a habeas corpus petition in the California Court of Appeals regarding his
12 sentence. In that proceeding, Balbuena alleged his sentence of 72-years-to-life in prison in the
13 underlying action constitutes a sentence on a minor that violates the 8th Amendment under *Miller*
14 *v. Alabama*, __ U.S. __, 132 S.Ct. 2455 (2012) and other decisions. The California Court of
15 Appeal issued an Order to Show Cause and ordered that counsel be appointed for Balbuena.
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17 His appointed counsel thereafter informed the California Court of Appeal that she had a
18 conflict of interest and sought leave to withdraw as Balbuena's attorney. The California Court of
19 Appeal granted her leave to withdraw and appointed undersigned counsel as counsel for
20 Balbuena in that state proceeding. Balbuena's prior attorney then sent to undersigned counsel
21 three banker boxes of materials related to the state proceedings in the trial and appellate courts
22 (such as transcripts of the trial, investigative reports and interviews). Undersigned counsel is
23 now reviewing those records. Such records will be relevant to the Rule 60(b) Motion and related
24 proceedings in this Court.
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1 In addition to representing Balbuena, undersigned counsel is representing 40 to 50 other
2 clients in California and federal courts, in the trial courts or on appeal. Counsel for Balbuena has
3 very recently filed, *inter alia*, a 29-page Motion/Memorandum to Suppress Evidence, Quash
4 Warrant and Traverse the Warrant and an 81-page Appellant's Opening Brief for a client
5 sentenced to life in prison.
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8 Counsel for respondent and counsel for petitioner STIPULATE that the date by which
9 petitioner may file his Rule 60(b) Motion may be extended 30 days up to and including April 7,
10 2014. The parties further stipulate that the filing dates for subsequent pleadings may be similarly
11 extended: respondent's response due on or about June 7, 2014, and petitioner's reply, if any, on
12 or before July 7, 2014.
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14 IT IS SO STIPULATED.

15 DATED: February 28, 2014

_____/s/
Jill Marietta Thayer
Deputy Attorney General
Attorney for Respondent

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19 DATED: February 28, 2014

_____/s/
Scott A. Sugarman
Attorney for Alexander Balbuena

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21 SO ORDERED.

22 DATE: 3/4/14

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RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE
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